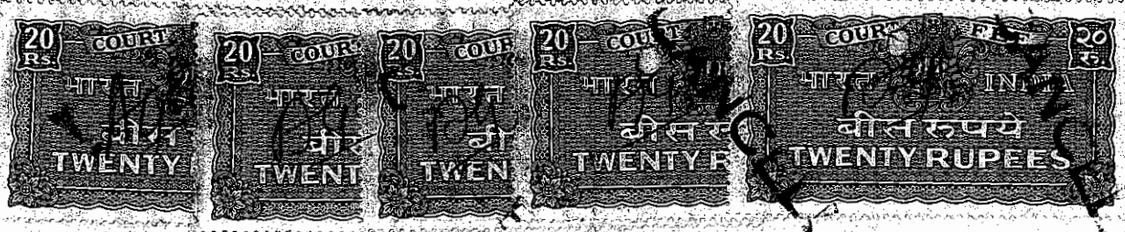

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

W.P.No. 5196 /99

PETITIONERS : State of Madhya Pradesh through Sub-Divisional Officer, Hasdeo Right Bank Canal, Water Management No.2, Post DarwaDistt. Bilaspur.

-Versus-

RESPONDENTS : Ramlal Soni, Ex-Choukidar, Charv (Hardi) Distt. Janjgir, Distt. Bilaspur.

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA.

AFR (SC)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

WRIT PETITION NO. 5196 OF 1999

State of Madhya Pradesh

Versus

Ramanlal Soni

Present: Shri Pankaj Shrivastava, counsel for the petitioner.
Shri B.D. Guru, counsel for the respondent.

ORAL O R D E R

(21ST December, 2005)

Heard.

1. The present writ petition filed under Articles 226/227 of the Constitution of India is directed against the order dated 15.1.1999 (Annexure P-5) passed by the Industrial Court, Bench at Raipur in Appeal No. 518/M.P.I.R./96, whereby the appeal was dismissed and the order dated 17.9.1996 (Annexure P-3) passed by the Labour Court, Bilaspur in Case No. 57/M.P.I.R./95 was affirmed.

2. The facts in nutshell, relevant for adjudication are that the petitioner was appointed on 1.1.81 as Helper in Water Management Department at Bilaspur. The respondent was promoted to the post of Chowkidar on 1.1.1989. Vide order dated 6.2.1995, the respondent was intimated that his service would be terminated w.e.f. 28.2.1995. The respondent filed an application Under Section 31 (3) of the Chhattisgarh/Madhya Pradesh Industrial Relations

Act, 1960 (hereinafter referred to as "MPRA") in the Labour Court, Bilaspur.

3. By its order dated 17.9.1996 (Annexure P-3) learned Labour Court came to conclusion that termination of service of the respondent herein, amounts to retrenchment and there was no compliance of provisions of Section 25 (F) of the Industrial Disputes Act, 1947 before passing the order. The Labour Court allowed the application directing that the respondent be reinstated in service within a period of thirty days without back wages in view of the fact that the respondent was gainfully employed elsewhere.

4. The petitioner filed an appeal under Section 65 of MPRA before the Industrial Court, Bench at Raipur. The Industrial Court after hearing both the parties, by its order dated 15.1.1999 (Annexure P-5), dismissed the appeal and upheld the finding and order of the Labour Court.

5. The State Government has filed the present writ petition challenging the impugned order dated 15.1.1999 as well as the order dated 17.9.1996 passed by the Labour Court.

6. Shri Pankaj Shrivastava, learned counsel appearing for the petitioner submits that the impugned order of the Labour Court is, on the face of it, erroneous as the Labour Court has applied the provisions of Section 25 (F) of the Industrial Disputes Act, when the application was filed under the provisions of MPRA. Learned counsel further submits that the Labour Court as well as Industrial Court has came to conclusion that the respondent had worked for 240 days, though, no document in support of this finding was filed by the respondent. It was further contended that in view of several

decisions of the Supreme Court termination cannot be construed to be retrenchment. Learned counsel placed reliance on the decisions in **Batala Co-operative Sugar Mills Ltd. Vs. Sowaram Singh** (2005 AIR SCW 5514) and **Himanshu Kumar Vidyarthi and others Vs. State of Bihar and others** (AIR 1997 Supreme Court 3657) to support his contention.

7. Shri B.D. Guru, learned counsel appearing for the respondent per contra, submitted that in the present case, when the petitioner was admittedly appointed on 1.1.1981 and thereafter he was promoted to the post of Chowkidar on 1.1.1989, it is not necessary to prove that as to whether the respondent had worked for 240 days in a year or not. Learned counsel further contended that in the present case, the petitioner had not complied with the statutory requirement of Section 65 (3) of MPRA. The petition be dismissed on this ground alone.

8. Learned counsel for the respondent further contended that the High Court of Madhya Pradesh at Jabalpur, while considering the identical facts in W.P. No. 5197/1999 and the impugned order dated 16.1.1995 passed by the Industrial Court had came to conclusion that the Labour Court as well as Industrial Court have correctly decided the matter and the petition was dismissed accordingly.

9. After hearing learned counsel for the parties and perusing the records, appended to the petition as well as return, I find that the petitioner has not admittedly complied with the statutory provisions of Section 65 (3) of MPRA, which clearly provides that during pendency of proceedings arising out of the order passed by the

Industrial Court, High Court or the Supreme Court, as the case may be, the employee is entitled to full wages last drawn by him inclusive of any maintenance allowance admissible to him under any Rule, if the Labour Court as well as Industrial Court directed reinstatement of an employee. This court has not stayed the impugned orders passed by the Industrial Court as well as Labour Court.

10. The scope of jurisdiction of this High Court under Articles 226/227 of the Constitution of India wherein the orders passed by the courts/authorities are under challenge, is very limited. This court ought to entertain a petition in those cases only wherein some procedural irregularity or apparent error on the face of it or violation of principles of natural justice have been found in the impugned orders. It is well nigh settled that power under Article 227 is one of judicial superintendence which cannot be used to upset conclusion of facts unless such conclusions are perverse. The Labour Court as well as Industrial Court has considered all the relevant facts while passing the impugned orders. The petitioner's service was terminated without giving any compensation or providing an opportunity of hearing, and as such the petition deserves to be dismissed even on the ground of not following principles of natural justice. The petitioner had also not complied with the statutory provisions of MPRA which is a beneficiary legislation as such the petitioner does not deserve any sympathy or consideration in the matter. Be that as it may, findings of the Industrial Court as well as the Labour Court do not want any interference by this court. With regard to the objection of the petitioner that Section 25 (F) of the Industrial Disputes Act dealing with case of 'retrenchment' is not

applicable in an application filed under MPRA is without any basis. "Retrenchment", as defined by the Supreme Court in catena of decisions is that "retrenchment" in its ordinary connotation is discharge of labour as surplus though the business or work itself is continued. The term "retrenchment" is suggestive of the legislative intent to assign the term "retrenchment" a meaning wider than what it is understood to have in common parlance. There are four exceptions carved out of the artificially extended meaning of the term "retrenchment", and therefore, termination of service of a workman so long as it is attributable to the act of the employer would fall within the meaning of "retrenchment" dehors the reason for termination. Decisions cited by learned counsel for the petitioner are not relevant on the facts of the present case.

11. An application for change of nature of service, may be made to the Labour Court and retrenchment is one of the change as provided in Schedule-II under Section 31 of MPRA.

12. In view of the above, there is no illegality or perversity in the order of the Labour Court by relying on the provisions of Section 25 (F) of the Industrial Disputes Act, dealing with 'retrenchment'.

13. For the reasons stated above, the petition is dismissed. The petitioner is directed to reinstate the respondent in the service within 30 days from today. The respondent shall be entitled to back wages for the period from 15.1.1999, when the impugned order dated 15.1.1999 (Annexure P-5) was passed by the Industrial Court, confirming the order dated 17.9.1996 (Annexure P-3) passed by the Labour Court whereby the petitioner was directed to reinstate the

respondent. The petitioner has not complied with the statutory provisions of Section 65 (3) of MPRA till date.

14. Accordingly, the petition is dismissed with costs quantified to be a sum of Rs. 5000/- payable to the respondent.

Sd/-
Satish K. Agnihotri
Judge

Bablu